

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA :

: 18 Cr. 30 (PAC)

- against - :

: **ORDER**

Michael Nunez, :

Defendant. :

-----X

HONORABLE PAUL A. CROTTY, United States District Judge:

Michael Nunez is an inmate at FPC Schuylkill, where he is serving the 150-month prison sentence imposed by this Court after he pled guilty to one count of conspiracy to distribute heroin and fentanyl. Minute Entry dated Nov. 2, 2018; Dkt. 165, at 1. He moves that his appellate counsel appointed under the Criminal Justice Act (“CJA”) be further appointed to file a motion under 18 U.S.C. § 3582(c)(1)(A)(i) in this Court for compassionate release. The motion for appointment of CJA counsel is denied.

Motions for compassionate release amid the COVID-19 pandemic have been made under 18 U.S.C. § 3582(c)(1)(A)(i), which provides a limited statutory exception to the general rule that a court may not amend a term of imprisonment once it has been imposed. *See United States v. Kaba*, 19 Cr. 242 (PAC), 2020 WL 2520807, at *2 (S.D.N.Y. May 18, 2020) (“The compassionate release provision allows a district court to ‘reduce the term of imprisonment’ where it finds ‘extraordinary and compelling circumstances.’”).

But the Second Circuit and courts in the Southern District of New York have made clear that “there is no statutory right to counsel under the [CJA] in connection with a § 3582(c)

motion, and that the provision of counsel for such motions should rest in the discretion of the district court.” *United States v. Cirineo*, 372 F. App’x 178, 179 (2d Cir. 2010) (summary order). *See also United States v. Hoousendove*, 545 F. App’x 37, 38 (2d Cir. 2013) (summary order); *United States v. Reddick*, 53 F.3d 462, 464–65 (2d Cir. 1995); *United States v. La Rosa*, 08-cr-578 (JGK), 2016 WL 5921827, at *2 (S.D.N.Y. Oct. 11, 2016); *United States v. Agostini*, 00-CR-237 (VM), 2015 WL 8528451, at *7 (S.D.N.Y. Dec. 9, 2015); *United States v. Urena*, No. 99 Cr. 73 (JFK), 2008 WL 4198517, at *2 (S.D.N.Y. Sept. 9, 2008).

CONCLUSION

Nunez may file a compassionate release motion pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) *pro se* or with retained counsel, but he is not entitled to assigned counsel. The Clerk of Court is directed to close the motion at Docket 350.

Dated: New York, New York
May 28, 2020

SO ORDERED



PAUL A. CROTTY
United States District Judge